120-60

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 1030.

THE UNITED STATES, APPELLANT,

vs.

CHARLES H. ROCKWELL.

APPEAL FROM THE COURT OF CLAIMS.

FILED SEPTEMBER 27, 1886.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 1030.

THE UNITED STATES, APPELLANT,

vs.

CHARLES H. ROCKWELL.

APPEAL FROM THE COURT OF CLAIMS.

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1 In the United States Court of Claims.

CHARLES H. ROCKWELL
vs.
THE UNITED STATES. } No. 14739.

I.—*Petition.*—*Filed Dec.* 15, 1885.

To the honorable the judges of the Court of Claims:

The petition of Charles H. Rockwell respectfully shows to your honors:

First. That he is a citizen of the United States and an officer of the Navy thereof, to wit, a lieutenant-commander.

Second. That he was appointed an acting master in the Volunteer Navy July 15th, 1862; promoted to lieutenant December 16th, 1862, lieutenant-commander April 29th, 1865, and was honorably discharged December 8th, 1865; was reappointed acting master November 19th, 1866, and served until March 12th, 1868, when he was appointed master in the Regular Navy. December 18th, 1868, he was promoted to the grade of lieutenant, in which he served until February 26th, 1878, when he was promoted to his present grade.

Third. Your petitioner says that from the date of his last entry into the Navy to July 1st, 1870, the grades of master, lieutenant, and lieutenant-commander had, by law, no graduated pay, and that the grade of lieutenant is the lowest grade having graduated pay held by your petitioner since last entering the Navy; wherefore your petitioner claims
2 that under the provisions of the naval appropriation act of March 3d, 1883 (22 Stats., 473, sec. 1), he is entitled to be credited on his grade of lieutenant in the Regular Navy, with all of his service rendered prior to his appointment to that grade, and to receive the difference between the pay of a lieutenant in his first five years and in his second five years, allowed by acts of July 15th, 1870 (16 Stats., 330), and section 1556, Revised Statutes, from July 1st, 1870, to December 18, 1873.

Fourth. Your petitioner says that he has never received credit or difference of pay on account of said service.

Wherefore your petitioner prays judgment against the United States in the sum of $.

Your petitioner further says that he is the sole owner of this claim, and has never assigned the same or any part thereof to any person; that he is justly entitled to the amount herein claimed from the United states, after allowing all just credits and offsets; and that he has appointed John Paul Jones, of Washington, D. C., his attorney for the prosecution of the same.

CHARLES H. ROCKWELL,
By JOHN PAUL JONES,
Attorney.

DISTRICT OF COLUMBIA,
County of Washington, ss:

John Paul Jones, being first duly sworn, says that he is the attorney of Charles H. Rockwell, and that the matters stated in the foregoing petition are true, to the best of his knowledge and belief.

JOSEPH W. AMAN,
Com'r Court of Claims.

3 II.—*General traverse.*—*Filed Oct.* 29, 1885.

And now comes the Attorney-General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegaiion therein contained, and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney-General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

ROBERT A. HOWARD,
Assistant Attorney-General.

4 III.—*Findings of fact and conclusion of law.*

FINDINGS OF FACT.

This case having been heard by the Court of Claims, the court upon the evidence finds the facts to be as follows:

I.

The claimant was commissioned and served in the Regular and Volunteer Navy as follows:

(1) Acting master in Volunteer Navy from July 15, 1862, to Decem. 16, 1862.

(2) Lieutenant from December 16, 1862, to April 29, 1865.

(3) Lieutenant-commander from April 29, 1865, to December 8, 1865, when he was honorably discharged.

(4) Acting master from November 19, 1866, to March 12, 1868.

(5) Master in Regular Navy from March 12, 1868, to December 18, 1868.

(6) Lieutenant from December 18, 1868, to February 26, 1878.

(7) Lieutenant-commander from February 26, 1878, to March 3, 1883.

II.

He has been paid for all said services in accordance with the laws in force at the time they were performed, but has received nothing on account of the provisions of the act March 3, 1883, chapter 97 (22 Stat. L., 473), requiring credit to be given to all officers of the Navy for the time they have served as officers or enlisted men in the Regular or Volunteer Army or Navy, or both.

CONCLUSION OF LAW.

Upon the foregoing findings of fact the court decides as a conclusion of law that the claimant is entitled to recover the sum of $691.60.

IV.—*Opinion.*

RICHARDSON, C. J., delivered the opinion of the court:

The claimant, an officer of the Navy, brings this action to recover the

additional pay to which he alleges that he is entitled under the following provisions of the act of March 3, 1883, chapter 97 (22 Stat. L., 473):

"And all officers of the Navy shall be credited with the actual time they may have served as officers or enlisted men in the Regular or Volunteer Army or Navy, or both, and shall receive all the benefits of such actual service in all respects in the same manner as if all said service had been continuous and in the Regular Navy in the lowest grade having graduated pay held by such officer since last entering the service;

"Provided, That nothing in this clause shall be so construed as to authorize any change in the dates of commission or in the relative rank of such officers;

"Provided, further, That nothing herein contained shall be so construed as to give any additional pay to any such officer during the time of his service in the volunteer Army or Navy."

5 From July 16, 1862, when the claimant entered the service, line officers of the Navy received, under the act of July 16, 1862, chapter 183 (12 Stat. L., 586), no additional pay for length of service until the passage of the act of July 15, 1870, chapter 295, section 2 (16 Stat. L., 330, now Rev. Stat., sec. 1556). From June 30, 1870, by the latter act, $200 a year additional has been allowed to lieutenant-commanders after four years from date of commission, and the same amount to lieutenants, masters, and ensigns after five years from date of commission.

It may be noticed that the length of service which gives additional pay to officers of the Army counts from their first entry into service, and the pay is increased every five years until it reaches 40 per cent. of their grade, or, in the case of a colonel, to $4,000 (Rev. Stat., secs. 1262, 1263, 1267; act of June 18, 1878, ch. 263, 7; Tyler's Case, 16 C. Cls., 223), while the length of service which gives additional pay to officers of the Navy counts only from the date of commission and begins anew with each commission, and the officers of the line have but one increase of pay for length of service (Rev. Stat., sec. 1556).

That additional pay was expected to follow the credit for length of service is evident from the last proviso, which is that "nothing herein contained shall be so construed as to give any additional pay to any such officer during the time of his service in the volunteer Army or Navy," thus implying that it was to be given in other cases, and so the act has been construed by accounting officers.

The provisions of the act of 1883 seem to have been enacted for the purpose of giving to all officers in the Regular Navy, since last entering the service, in the grade first held by them then having graduated pay, credit for all their previous service in the Army or Navy, or both regular or volunteer, and whether continuous or not, in order that while they remained in such grade they should have the additional pay then allowed for length of service.

The claimant served three years four months and twenty-three days in the Volunteer Navy as acting master, lieutenant, and lieutenant-commander, when he was honorably discharged December 8, 1865. He last entered the service March 12, 1868, and has served continuously ever since in different grades. First he was acting master from November 19, 1866, to March, 1868, and then master till December 18, 1868, two years and twenty-nine days. At that time the grade of master had no graduated

pay. From December 18, 1868, he served as lieutenant, for which grade as well as that of master graduated pay was first established by the act of July 15, 1870, chapter 295, section 3 (now Rev. Stat., sec., 1556).

Therefore the lowest grade having graduated pay when held by the claimant since last entering the service was that of lieutenant. Credit under the act of 1883, for previous service, which was more than five years, must be given to him in that grade. Turning to the pay acts in force at that time, we find that such credit would entitled him to no additional pay until July 1, 1870, from which time, under the act of July 15 of that year, he would be entitled to $200 a year additional to his regular pay for length of service. He was in fact so paid, under the pay law then in force, after five years' service in that grade from December 18, 1873, till he was promoted, February 26, 1878.

But he has not been paid for additional pay accruing from the
6 act of 1883, from July 1, 1870, to December 18, 1873, which amounts to $691.60.

This is the only reasonable and sensible interpretation which we can give to the act of 1883, and, as was said by Mr. Justice Field in United States v. Kirby (7 U. S., 486), "all laws should receive a sensible construction."

Other interpretations have been suggested, which we cannot adopt. The act provides that all officers "shall be credited with the actual time they have served as officers and enlisted men, and shall receive all the benefits of such actual service in all respects and in the same manner as if all said service had been continuous in the Regular Navy in the lowest grade held by them having graduated pay held by such officer since last entering the service."

The strict letter of this language would include credit for length of service after leaving the grade first held with graduated pay, as well as services before entering that grade. But we understand the act to deal with the credit for length of service as it might have been given when the grade having graduated pay was first held, and of course subsequent service could not then have been reckoned, and the claimant does not ask for that construction.

Again it is suggested that in order to give the officer all the benefits of such actual service as though it had been in the grade to which it is to be credited, as the language of the act provides, he ought to have the full salary of that grade for the whole time, back to his re-entry into the Regular Navy, although he might have held during that time a lower grade, having less pay. But a sensible and reasonable view of the act is that it deals with credit for length of service and the additional pay which arises therefrom, and not with the matter of regular salary, and thus it appears to have been understood by all parties.

But it is claimed for the defendants that the credit for length of service under the act of 1883 should be given in the lowest grade having graduated pay by the then existing law, which the claimant held since last entering the service, although when it was held by him it had no graduated pay. This construction we do not adopt.

The pay acts apply only to the grades held by officers while such acts were in force. To give credit for previous length of service in a grade which did not have graduated pay when held by an officer, merely because

it did have graduated pay under a subsequent law when he did not hold it, and when such credit could confer no benefit, would require an unreasonable construction of the act, which should not be adopted if there be the slightest ambiguity or doubt.

The act of 1883 seems to deal with the status of the officers while they were passing through the different grades held by them, both as to credit for length of service and as to pay which may be affected by such credit. As the law in force when officers held their different grades must regulate their pay, and as that law is not changed by the act of 1883, so the credit for length of service must be held to relate to the same period of time—that is, the time in which the grades were actually held.

The claimant will have judgment for $691.60.

7 V.—*Final judgment.*

At a Court of Claims held at the city of Washington, D. C., on the 10th day of May, A. D. 1886, judgment was ordered to be entered up as follows:

The court on due consideration of the premises find for the claimant, and do order, adjudge, and decree that the said Charles H. Rockwell do have and recover of and from the United States the sum of six hundred and ninety-one $\frac{60}{100}$ dollars ($691.60).

8 VI.—*Application for and allowance of appeal.*

From the judgment rendered in the above-entitled cause, on the 10th day of May, 1886, in favor of claimant, the defendants, by their Attorney-General, on the 27th day of May, 1886, make application for, and give notice of, an appeal to the Supreme Court of the United States.

ROBERT A. HOWARD,
Assistant Attorney-General.

Filed May 27, 1886.

And now, to wit, May 27, 1886, it is ordered by the court that the appeal be allowed as prayed for.

WILLIAM A. RICHARDSON,
Chief Justice.

9 In the Court of Claims.

VII.

CHARLES H. ROCKWELL
vs.
THE UNITED STATES. } No. 14739.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court and the conclusion of law thereon, of the opinion of the court, of the final judgment of the court, of the application of the defendants for and allowance of appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington, this 15th day of September, 1886.

[SEAL.] JOHN RANDOLPH,
Asst. Clerk Court of Claims.

(Indorsement on cover:) No. 1030. The United States, appellant, vs. Charles H. Rockwell. Court of Claims. Filed September 27, 1886.

120-60

Office Supreme Court U. S.
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JAMES H. McKENNEY.
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1886.

THE UNITED STATES, APPELLANT,
vs.
CHARLES H. ROCKWELL. } No. 1030.

STATEMENT, ASSIGNMENT OF ERRORS, AND BRIEF FOR APPELLANT.

In the Supreme Court of the United States.

OCTOBER TERM, 1886.

THE UNITED STATES, APPELLANT,
vs.
CHARLES H. ROCKWELL. } No. 1030.

APPEAL FROM THE COURT OF CLAIMS.

STATEMENT OF THE CASE.

This is an appeal from a judgment rendered by the Court of Claims in favor of Charles H. Rockwell, on the 10th day of May, 1886, for $691.60.

Claimant was enlisted and served in the volunteer and regular Navy.

In the volunteer Navy:

(1) Acting master from July 15, 1862, to December 16, 1862.

(2) Lieutenant from December 16, 1862, to April 29, 1865.

(3) Lieutenant-commander from April 29, 1865, to December 8, 1865, when he was honorably discharged.

(4) Acting master from November 19, 1866, to March 12, 1868.

In the regular Navy:

(1) Master from March 12, 1868, to December 18, 1868.

(2) Lieutenant from December 18, 1868, to February 26, 1878.

(3) Lieutenant-commander from February 26, 1878, to March 3, 1863.

Claimant has been paid for all services in accordance with the laws in force at the time they were performed.

His present claim is based upon the provisions of the *Act of March* 3, 1883, chapter 97 (22 Stat. L., 473), as follows:

> And all officers of the Navy shall be credited with the actual time they may have served as officers or enlisted men in the regular or volunteer Army or Navy, or both, and shall receive all the benefits of such actual service in all respects and in the same manner as if said service had been continuous and in the regular Navy *in the lowest grade having graduated pay held by such officer since last entering the service.*

At the time claimant last entered the service in the regular Navy as master, neither commanders, lieutenant-commanders, lieutenants, or masters had graduated pay.

Under the provisions of the *Act of July* 15, 1870 (16 Stat. L., 330), commanders, lieutenant-commanders, lieutenants, masters, &c., were entitled to graduated pay from and after the 30th of June, 1870.

Whilst claimant was commissioned as master in the Navy, the grade of master had no graduated pay. Whilst he was commissioned as lieutenant, the *Act of July* 15, 1870, *supra*, was passed.

The interpretation given by claimant to this act is, that

as he never held the position of master when it had graduated pay, he is entitled to the benefit of his actual service in all respects in the same manner as if all his service had been continuous and in the regular Navy in the grade of lieutenant, that being the lowest grade having graduated pay *when held* by him.

Claimant served in the volunteer Navy five years seven months and sixteen days. He served in the regular Navy prior to his appointment of lieutenant from March 12, 1868, to December 18, 1868, a period of nine months and six days. His whole service prior to that time was six years two months and twenty-two days.

The position of claimant is that he should receive the pay of lieutenant after five years' service, from the date of the passage of the Act of July 1, 1870, until he was promoted February 26, 1878.

The account as claimed was disallowed by the accounting officers of the Treasury, substantially on the ground that the lowest grade having graduated pay at the time of the passage of the act held by claimant since entering the regular Navy was that of master, and therefore, under the provisions of said act, he is deemed to have served continuously prior to the passage thereof in the grade of master nineteen years seven months and seven days.

The Comptroller says in his opinion:

> It seems to me the language of the act of 1883, in this respect, is too plain to admit of serious doubt.

The court below decided—

(1) That under the provisions of the act that the lowest grade held by claimant since last entering the service having graduated pay was that of lieutenant.

(2) That the only reasonable and sensible interpretation that can be given to the act of 1883 is that claimant is entitled to pay in the rank of lieutenant, after giving him credit with prior service in order to fix the rate of pay from July 1, 1870, to December 18, 1873, when he was promoted. That for such period there is still due him $200 per annum, or $691.60.

The construction given to the statute by the Court of Claims is claimed by appellant to be unwarranted by the terms of the law, and appeal is therefore taken to this court

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ASSIGNMENT OF ERRORS.

The court erred—

In deciding as a conclusion of law upon the findings of fact, as stated, that the claimant is entitled to recover the sum of $691.60.

(2) In deciding that claimant should have judgment for $691.60.

(3) In holding that "as the lowest grade having graduated pay when held by the claimant since last entering the service was that of lieutenant, credit under the act of 1883 for previous service, which was more than five years, must be given in that grade." (Rec., p. 2.)

(4) In deciding that claimant was entitled to additional pay accruing from the act of 1883, at the rate of $200 per annum from July 1, 1870 (when the act was passed giving graduated pay to lieutenants, &c.), to December 18, 1873, when he was promoted.

(5) In deciding that the benefits of the said act so far as length of service is concerned, only accrue at the time

when claimant attained such lowest grade having graduated pay.

(6) In not deciding that the lowest grade having graduated pay held by claimant since last entering the service was that of master.

(7) In not deciding that claimant is entitled to the benefits of the act of 1883, as if all of his service in the regular Navy had been continuous in the grade of master.

BRIEF OF ARGUMENT.

The question in this case is, what was the lowest grade having graduated pay held by claimant since last entering the service? That fact being determined, then claimant in such grade, it is submitted, is entitled to be credited with all the time he may have served as an officer or enlisted man in the Navy, receiving all the benefits of such service as if the same had been continuous in the regular Navy. The position of the claimant is that the lowest grade having graduated pay, when held by him, was that of lieutenant; that whilst he held such position the act of 1870, giving graduated pay to lieutenants, masters, &c., was passed, and that therefore, under the true construction of the longevity pay act of 1883, he is entitled from the date of the passage of the act until promoted to the pay of a lieutenant after five years' service. He was not so paid until after December 18, 1883 (five years from date of his commission), but was then paid as having served five years in that rank until the date of his promotion, February 26, 1878.

It was claimed on the part of the Government that the words "the lowest grade having graduated pay held by such officer," &c., applies to the lowest grade having a graduated pay at the time of the passage of the act of 1883.

The question was decided in the Court of Claims in favor of the claimant. It was held by the court that claimant was entitled to "additional pay accruing from the act of 1883, from July 1, 1870, to December 18, 1873, which amounts to $691.60." The reasoning of the court below has resulted in the formulation of a rule for this and like cases, founded, it is submitted, upon what the court believes would be a just and equitable mode of payment for actual and continuous service, and not upon the actual wording of the act of 1883 construed in accordance with the usual and ordinary rules applicable to the construction of statutes. In other words, the court has decided what the law of 1883 should, in their opinion, mean, and not what it actually does mean.

Upon the point at issue in this case the language of the act of 1883 is clear and precise. But the Comptroller of the Treasury, in giving the act its obvious meaning, deprived the claimant, to some extent, of benefits to which he thinks he is entitled and he therefore instituted this suit in the court below.

When the meaning of a statute is plain it is the duty of the court to enforce it according to its obvious terms. (*Thornley* vs. *The United States*, 113 U. S., p. 313, and cases therein cited.) In *The United States* vs. *Graham*, 110 U. S., p. 221, this court holds in reference to the construction of a statute "with language clear and precise and with meaning evident, there is no room for con-

struction, and consequently no need of anything to give it aid. The cases to this effect are numerous."

"We cannot supply qualifications which the legislature has failed to express." (*United States* vs. *Fox*, 95 U. S., pp. 672, 673.)

The provisions of the *Act of March* 3, 1883 (22 Stat. L., 473), are as follows:

> And all officers of the Navy shall be credited with the actual time they may have served as officers or enlisted men in the regular or volunteer Army or Navy, or both, and shall receive all the benefits of such actual service in all respects, in the same manner as if all such service had been continuous and in the regular Navy in the lowest grade having graduated pay held by such officer since last entering the service: *Provided*, That nothing in this clause shall be so construed as to authorize any change in the dates of commission or in the relative rank of such officers; *Provided further*, That nothing herein contained shall be so construed as to give any additional pay to any such officer during the time of his service in the volunteer Army or Navy.

It is clear from the provisions of this act that all officers of the Navy are to be credited with the time of their actual service, whether in the Army or Navy, regular or volunteer, as if all such service had been continuous and in the regular Navy.

That in the regular Navy it should be credited *in the lowest grade having graduated pay held by such officer since last entering the service.*

By the first proviso the benefit of the act is practically limited to increase of pay. The second proviso limits such increase to the period of service in the regular Navy.

The benefits which are to accrue by virtue of the act are specifically set forth, viz:

> In the same respect and in the same manner as if *all said service* had been continuous and in the regular Navy *in the lowest grade having graduated pay held by such officer since last entering the service.*

It is submitted that the evident and obvious meaning of this act is that the pay for "all of the service" of an officer in the regular Navy shall be calculated from the date of last entering service in the lowest grade having graduated pay held by such officer up to the time of the passage of the act of 1883.

It is admitted, as held by the court below (Rec., p. 3), "that additional pay was expected to follow the credit for length of service, is evident from the last proviso," but it does not necessarily follow that in every case additional pay must accrue. It only becomes due when benefits shall accrue for "all the service" in the regular Navy, as if it had been rendered from the time of last entering the service, in the lowest grade having graduated pay held "by such officer."

The benefit of the volunteer service in the Navy and Army is explained in the opinions rendered in *Hawkins* vs. *United States* and *Jordan* vs. *United States* (19 C. Cls., pp. 611, 622).

In these cases it was in substance held:

Pay is graduated after entering the regular Navy in the lowest grade having graduated pay by reason of the length of the volunteer service in the Army or Navy. In the *Hawkins Case, supra*, claimant in 1871 entered the regular Navy as a boatswain; it was held that by virtue of

his volunteer service he had already served through the first triennial period of graduated pay. The same rule was applied to Jordan, who entered the Navy as an assistant paymaster.

Applying the obvious construction, as claimed by appellant, to this case; if the lowest grade held by claimant since last entering the service was that of master, he is entitled to the benefits of the act of 1883, as if all his service in the regular Navy had been rendered in the grade of master, and the pay graduated by giving credit for the volunteer service. If such lowest grade is lieutenant, then claimant should be paid in such grade, with like credit for volunteer service from the date of entry into the volunteer service until the passage of the act of 1883. That is to say, he should be credited with nineteen years seven months seven days' service, and be entitled to whatever increase of compensation the grade of master or lieutenant (as may be decided) since last entering the service confers upon him.

It is admitted, as held by the court below, that "all laws should receive a sensible construction;" but it is equally true that words are to be used according to their meaning, and effect must be given to such meaning where there is no uncertainty or ambiguity. If the plain and obvious construction claimed by appellant of this act be applied, then, under all imaginable circumstances, the officer will have credit for the time he served in the volunteer Army or Navy. If, as held by the court, an officer is entitled to increase of pay only from the time he enters upon the lowest grade having graduated pay, and then only for the

period during which he holds such grade, volunteer service may or may not be a benefit, dependent upon the fact as to when he attained such rank, relative to the act of 1870, *supra*.

The construction given to the act of 1883 by appellant applies to "all of said service," the construction given by the court to only a part, and possibly to only a small fraction, of such service. In the present case, assuming claimant's lowest grade to have been that of master, it would apply only to the period in which he was master; or if lieutenant, then only to the period whilst he held the rank of lieutenant. If the construction claimed by appellant is correct, then all officers of the Navy who have served in the regular or volunteer Navy are included in the benefits of the act as well "all their service;" whilst, if the construction of the court below is adopted, only a portion of such officers and a part of said service is included.

A construction that will give a uniform application to a law, it is submitted, is the "only reasonable and sensible interpretation."

The rules relative to the payment of Army and Navy officers differ, and the rules of one Department are of no force in interpreting the rules of the other. In the case of *Thornley* vs. *United States*, 113 U. S., 315, the court say: "We are not called upon to explain why Congress should apply one rule to the officers of the Army and another to the officers of the Navy. It is sufficient to say that it has clearly done so. If the law is unequal and unjust the remedy is with Congress, and not with the court."

But, whatever may be the construction adopted as to this point, the question still remains: Do the words "in the lowest grade having graduated pay held by such officer since last entering the service" mean what the words import, and, as appellant claims, a grade having graduated pay at the time of the passage of the act, or a grade having graduated pay *when* held by the officer?

It is submitted that the construction claimed by appellant is correct. When claimant was commissioned master in 1868 it was a graded office. He outranked an ensign; a lieutenant was his next superior officer. He had, therefore, held an office which had graduated pay at the time of the passage of the act of 1883. If it were intended that the benefits of the act should be received by him as if all his service had been rendered in a grade which *when* held by him had graduated pay, it would have been so expressed by Congress. As it was not so expressed, and the word *when* is not necessary to give a sensible or even equitable interpretation to the act, it cannot be interpolated. To do so would be to change the obvious meaning of the statute—would be legislation and not interpretation. (*Thornley* vs. *United States, supra.*)

It was claimed by the Second Comptroller that claimant should be "deemed to have served continuously in the grade of master prior to the passage of the act of 1883, nineteen years seven months and seven days, and is entitled to whatever increase of compensation such service in that grade confers upon him."

Such conclusion appellant claims to be in accordance

with a sensible and reasonable interpretation of the statute according to its clear meaning and obvious terms.

It is respectfully submitted that the decree of the court below be reversed.

Very respectfully,

A. H. GARLAND,
Attorney-General.
F. P. DEWEES,
Assistant Attorney.

120-60

Supreme Court of the United States.

THE UNITED STATES,
Appellant,
vs.
CHARLES H. ROCKWELL,
Appellee.

No. 1,030.

APPELLEE'S BRIEF OF ARGUMENT.

JOHN PAUL JONES,
ROBERT B. LINES,
Attys. for Appellee.

MILANS, PR.

Supreme Court of the United States.

THE UNITED STATES
vs.
CHARLES H. ROCKWELL. } No. 1,030.

APPEAL FROM THE COURT OF CLAIMS.

STATEMENT OF CASE.

Appellee was commissioned and served in the regular and volunteer Navy as follows:

VOLUNTEER NAVY.

(1) Acting master from July 15, 1862, to December 16, 1862.

(2) Lieutenant from December 16, 1862, to April 29, 1865.

(3) Lieutenant-commander from April 29, 1865, to December 8, 1865, when he was honorably discharged.

(4) Acting master from November 19, 1866, to March 12, 1868.

REGULAR NAVY.

(5) Master from March 12, 1868, to December 18, 1868.

(6) Lieutenant from December 18, 1868, to February 26, 1878.

(7) Lieutenant-commander from February 26, 1878, to March 3, 1883.

Judgment was rendered in the Court of Claims for the sum of $691.60.

The appellee, a naval officer, brought his suit in the court below to recover certain back pay which he claimed had accrued to him by virtue of recent legislation. There were earlier cases in the Court of Claims, in which the legislation herein under consideration was construed. The main question in these cases was whether this legislation was retroactive in its operation, or whether it conferred only future benefits.

The Court of Claims in the cases of Hawkins and Jordan, (19 Ct. Cls., 611, 621,) decided that the acts were retroactive in effect and that they carried with them benefits of back pay to those officers who came within their scope.

These decisions were not appealed from but were acquiesced in by the Departments of Justice, the Treasury and the Navy, and it is now admitted by the counsel for the Government that the decision in the Hawkins and Jordan cases (*supra*) is a true exposition of the meaning of the Acts of 1882 and 1883 therein construed. The only question in the case at bar is, therefore, whether or not the appellee can, under the peculiar circumstances of his case, recover.

In view of this we will not discuss the questions involved in the Hawkins and Jordan cases, but will ask permission to be heard upon them, if the court should think it necessary.

We have found it difficult to give a comprehensive statement of the nature and effect of the legislation herein to be considered within the limits to which we would confine a brief upon so unimportant a case. If we have exceeded the bounds, it is because the counsel for the Government has not seen fit to notice many of the minor points, which are of importance in establishing the absolute correctness of our position. We may also

have been led into too extended an argument by reason of our perfect familiarity with the details of this legislation. The act was drafted by the undersigned, after full consultation with the former accounting officers of the Treasury, and with the members of the Committee on Appropriations, for the purpose of effecting what the decision of the Court of Claims in this case has effected. Over three years have, however, passed and the act is still inoperative to a great extent.

It has been the policy of the Government, ever since the war of the rebellion, to give to officers in the military service full credit for the time they may have served in the volunteer Army or Navy. Such credit carries with it several benefits, and amongst them that of increased pay.

Sections 1,261 to 1,263 Revised Statues, regulate the pay of the Army, and fix an initial pay for each grade, but to this is added ten *per centum* for each term of five years service, whether in that or in preceding grades. By the Act of March 2, 1867, (Stats., 14, 434,) non-continuous and volunteer service *as officers*, had been made to count equally with continuous and regular service in all matters of rank, pay, allowance, and privileges, and by the Act of 1 June, 1878, (20 Stats., 150,) time served as an enlisted man in the Army, was to be likewise credited. Again, by the Act of 24 February, 1881, (21 Stats., 346,) the Army officer was allowed to count any time he might have served in the Navy.

The pay of Marine Officers is the same as that of Army officers, (Sec. 1612, R. S.,) and hence they too were benefited by the above quoted acts. But they were given practically the benefits conferred by the Act of 1881, (*supra*), by the earlier Act of March 2, 1867, (14 Stats., 516), now Sec. 1,605, R. S.

The act of July 15, 1870, now Section 1,556 R. S., gave to most grades of the Navy a pay graduated according to length of service, but service only in each particular grade was counted in computing this pay. In the words of the opinion below, such length of service "counts only from the date of commission and begins anew with each commission." The difference between this system of pay and that applicable to the Army, becomes important by way of explaining the necessity for the legislation the court is asked to construe, and which will hereafter be quoted.

The acts above quoted evidence the general policy of the Government, and there is no good reason why this policy should not embrace the Navy as well as the Army and Marine Corps. If officers of the two latter branches of the service are to receive credit, and all the benefits arising therefrom, for the time spent in the volunteer and regular service, justice and equity would accord to the Navy the same right. In fact, an act intended to thus benefit naval officers was passed 2 March, 1867, (14 Stats., 516, Sec. 3,) but owing to its peculiar wording it applied only to those few officers who were actually "*transferred*" from the volunteer to the regular Navy. If there was a lapse of even a single day between their volunteer and regular service, they took no credit for the former; (14 Ops. Att'y Gen., 142.) This act also only authorized credit for sea-service. This was all the legislation upon this subject, touching the Navy, until 1882.

To epitomize: by the various acts quoted Army and Marine officers were credited with all the time they might have served in any branch of the military service, no matter in what capacity, and this credit extended from one grade to another, until their maximum rate of pay was reached.

On the other hand, the no less worthy naval officer was only allowed credit for the time he served in the volunteer Navy, actually at sea, and only then when he was technically "*transferred*;" and if he was fortunate enough to come within this narrow construction of the Act of 1867, he received credit for his volunteer sea-service only in the grade into which he was transferred, because as soon as promoted, his longevity pay commenced from the date of his new commission.

There was only one thing in which service in the Army was of value to naval officers, and that was in retirement. The Act of August 3, 1861, now Sec., 1,443 R. S., allowed them to be retired after they had "been 40 years in the service of the United States."

Such was the state of the law when the Naval Appropriation Act of August 5, 1882, was passed, (22 Stats., 287.) In that act Congress attempted to remedy this unfair discrimination against naval officers, and the following clause was adopted without discussion:

"And all officers of the Navy, shall be credited with the actual time they may have served as officers or enlisted men in the regular or volunteer Army or Navy, or both, and shall receive all the benefits of such actual service in all respects, in the same manner as if all said service had been continuous, and in the regular Navy: *Provided*, That nothing in this clause shall be so construed as to authorize any change in the dates of commission, or in the relative rank of such officers." * * *

As rank, pay and retirement are the only "*benefits*" dependent on length of service, and as rank was excluded, and retirement already provided for, the only thing to be considered was the effect of the Act of 1882, upon pay.

When this clause came to be construed by the Treasury officials, it was found inapplicable to most of those officers who had been in the volunteer service, because

Section 1,556 R. S., graduated their pay in each grade from the date of commission, and the act did not specify in which grade the credit should be given. This is made plain by an illustration; the act provided for credit for the time of previous service, and that officers should receive "the benefits of such actual service in all respects, in the same manner as if all said service had been continuous in the regular Navy." If the officer had served as a gunner, boatswain or engineer, in the volunteer Navy, and was now a lieutenant in the regular Navy, he would receive no pay benefits, because if his previous service had been "continuous and in the regular Navy," it would avail him nothing, in computing his pay as a lieutenant, for the reason that his pay is, by Section 1,556 R. S., graduated from the date of his commission as such.

This construction is further explained by reference to the decision of the Hon. Second Comptroller, in the cases of James Nash and Samuel Cross, hereunto appended, and taken from Senate Ex. Doc. 107, 48th Cong., 1st Sess., marked "Exhibits A and B."

In the meantime the Treasury officials settled the accounts of ten officers as shown by appended lists taken from the same document, and marked "Exhibits C and D," by allowing them credit for the time of their prior service, where it had been performed in the same grade as that held by them in the regular Navy. And in most of the cases a special appropriation was made by Congress to pay the amount found due.

But very few of the officers who should have been benefitted by this legislation, came within the strict construction of the Act of 1882, and when apprized that this statute was practically inoperative, Congress, at the ensuing session, (March 3, 1883,) re-enacted the language of the Act of 1882, with the addition of the words in italics, as follows, (22 Stats., 473):

"And all officers of the Navy shall be credited with the actual time they may have served as officers or enlisted men in the regular or volunteer Army or Navy, or both, and shall receive all the benefits of such actual service in all respects in the same manner as if all said service had been continuous and in the regular Navy *in the lowest grade having graduated pay held by such officer since last entering the service: Provided*, That nothing in this clause shall be so construed as to authorize any change in the dates of commission or in the relative rank of such officers: *Provided, further, That nothing herein contained shall be so construed as to give any additional pay to any such officer during the time of his service in the volunteer Army or Navy.*"

In this the serious omission of the former act was supplied, the grade wherein credit was to be given being specified.

Congress in considering upon which grade to fix the credit, did not make it applicable to each succeeding grade as in the Army, because this would have not only disarranged the whole system of naval pay, but would have taken a vast sum of money from the Treasury, not only for back pay, but also in the future.

It was determined to fix upon one designated grade, and "the lowest grade having graduated pay held by such officer since last entering the sevice," was chosen. The reason of this was twofold; first, it put the officer who had volunteer or noncontinuous service in practically the same position, as to pay, he would have occupied if he had been "transferred," because if transferred, he would have been credited with his prior service in the grade in which he entered under his transfer, and would have received no credit beyond that grade; and second, because, as the act was intended to effect *pay* only, as above shown, the credit must be given in a grade where the pay was periodi-

cally increased, or such credit would be of no possible benefit.

Instead of saying "lowest grade having graduated pay," &c, Congress might have said "the lowest grade," &c. The reason for the addition of the words "having graduated pay" is obvious; prior to the Act of July 15th, 1870, now Sec. 1,556 R. S., (the Navy pay table) all of the grades of the line and many of the staff had a fixed, determinate pay, which did not increase with length of service. By this act, however, the system of graduated pay was extended so as to embrace all grades, excepting only a few of the highest in the line. But at that time (1870) most of those who had served as volunteers had re-entered the service as regular officers, and many of them had been promoted through one or more grades, as in the case at bar. Hence to give credit for prior non-continuous or volunteer service in the "lowest grade," would be of no pecuniary value, because when the officer held it there was only one rate of pay, no matter how long he might serve in it.

To illustrate from the case at bar; appellee served in the volunteer Navy from July 15th, 1862, to December 8, 1865, and from November 19, 1866, to March 12, 1868, in all 4 years 9 months and 16 days. He then, March 12, 1868, became a master in the regular Navy, and his pay was fixed at $1,500 at sea, $1,200 on shore and $900 when on leave, by the Act of July 16, 1862, (Stats. 12, 586.) There was no graduation for length of service. He served as a master until December 18, 1868, a period of 9 months and 6 days, (making total prior service 5 years 6 months 16 days,) when he was promoted a lieutenant. The pay of this grade at the date of his commission was also a fixed sum, (by the Act of 1862, *supra*,) in no way dependent on length of service, but by the Act of 1870, now Sec. 1,556 R. S.,

a lieutenant's pay was fixed at $2,400 at sea, $2,000 on shore and $1,600 on leave, for the first five years after date of commission, with an increase thereafter of $200 per annum.

This was the "graduated pay," meant by the act under consideration; *i. e.* a pay increasing or graded according to length of service. When this Act of 1870 went in effect appellee was a lieutenant (having passed through the grade of master and been promoted therefrom) and he continued as such for many years. This, then is "the lowest grade having graduated pay held by such officer (appellee) since last entering the service," and he must, therefore, to slightly paraphraze the Act of 1883, be "credited with the time of his prior service in all respects in the same manner as if said service had been continuous and in the grade of lieutenant." Giving him thus credit for the 5 years 6 months and 16 days he served before he became a lieutenant in the regular Navy, has the effect of putting him in his second pay lustrum from the date of his commission, to wit: December 18th, 1868. His pay would not, however, be effected by this credit until the passage of the Act of 1876 (*supra*) because prior to that his pay was not increased by the length of his service as a lieutenant. For the time after that date, however, up to December 18, 1873, five years from date of his commission, he is entitled to the $200 per annum increase. Making $691.60, the amount awarded by the court below.

The defense says, adopting the theory of the Second Comptroller, that the words "having graduated pay" refer to the law as it stood at the passage of the Act of March 3d, 1883. That is, that in applying this act to the appellee, you must look back along the line of his service since last entering the navy, see what commissions he held and when he held them, and then must

turn forward again to the law, as it stood in 1883, to see whether any of those commissions were to "grades *now* having graduated pay." If the court find that any of those commissions now have graduated pay attached to them, (as all of them must have, under Sec. 1,556 R. S.,) then it must take the lowest of those commissions, turn back again to the time the officer held it, and credit all prior service upon it. This must be done, although such commission, when held, had no graduated pay, and the credit, therefore, will not be of the slightest use to appellee in the matter of pay, (to affect which was the sole object of the act, rank being expressly excluded and retirement fully provided for in Section 1,446 R. S.) Of course it is of no use to give a man greater length of service in a grade where length of service did not affect pay.

Why Congress in legislating for a "lowest grade," necessarily long past when officers are in the line of promotion, should qualify it by words having reference solely to the present, is not explained by the Comptroller or the ingenious counsel for the defense. They simply say it is evidently so, apparently for no other reason than because "having" is a present participle.

There are two propositions briefly stated which are a complete answer to this:

First. The claimant never "held" a grade having graduated pay which did not have graduated pay at the time he held it. The grade of Master did not have graduated pay when he held it, and is not, therefore, the grade on which his pay is to be computed under the Act of 1883. Suppose that act to have said "the lowest grade, having a pay of $1,800 per annum held," &c., could it be contended that the grade of Master was intended, because it had that pay in 1883, (R. S.

1,556,) while at the time claimant held it it had only $1,500? (12 Stats., 586.)

Second. The words "having graduated pay," in the act of 1883, would be given no practical effect whatever by the construction of the Comptroller.

In 1883 all warrant officers, all grades of the staff, and all of the line below that of Commander had graduated pay. (R. S., 1,556.) There was, therefore, no necessity of using the words "having graduated pay" to describe the existing condition of these grades.

The act would have precisely the same force under the Comptroller's ruling if it had read "the lowest grade * * * held by such officer since last entering the Navy." But it is a cardinal principle of statutory construction that all words must be given weight if possible, and a construction which gives them force is to be preferred to one which does not.

In conclusion we beg to call attention to certain facts, which, though not in the record, can be substantiated by reference to public documents.

First. The accounting officers have paid out over $250,000, under this act, the largest part of which was paid by direct appopriation in the deficiency bills of the past two sessions of Congress, under the head of "Pay of the Navy for 1883, and prior years."

Second. The cases which will be governed by the decision in the case at bar, are but a remnant of those coming under the spirit and intent of this act, as will appear by an examination of the Naval Registers of the past few years.

Third. The construction herein contended for was adopted by the Treasury Department until the advent of the present Hon. Second Comptroller, and cases were settled in accordance therewith, and the money paid by direct appropriation.

Two instances will suffice as illustrations: Paymaster Leonard A. Frailey, served as acting assistant paymaster, volunteer Navy, from 20th August, 1864; July 23, 1866, transferred to the regular Navy as past assistant paymaster; promoted paymaster 29th January, 1869, (Hammersley's General Register U. S. Navy;) claim allowed for $1,184.78, and reported to Congress for payment, (H. Ex. Doc. 70, 49th Cong., 1st Sess., p. 70,) and paid by appropriation in deficiency bill.

Paymaster Robert W. Allen, acting assistant paymaster, volunteer Navy, 20th January, 1864; past assistant paymaster, (regular Navy) 23d July, 1866; paymaster, 1st February, 1868, (Hammersley, &c.;) claim allowed $793.28, and reported to Congress for payment (H. Ex. Doc. 153, 48th Cong., 2d Sess., p. 71,) and paid by appropriation in deficiency bill.

Both these instances are identical in principal with the case at bar. Both officers served as acting (*i. e.* volunteer) officers; both were transferred to the regular Navy into a grade then having no graduated pay (*i. e.* P. A. Paymaster); both were promoted into a grade which did have graduated pay (*i. e.* Paymaster), and both were given credit for all their prior service in this grade.

We ask that this construction, which is the equitable, sensible, and grammatical one, and which has been ratified by Congress, be applied to similar cases.

Respectfully submitted,

JOHN PAUL JONES,
ROBT. B. LINES,
Attorneys for Appellee.

EXHIBIT "A."

TREASURY DEPARTMENT,
SECOND COMPTROLLER'S OFFICE,
Washington, D. C., January 3, 1883.

Respectfully returned to the Fourth Auditor.

It appears from the papers submitted that James Nash was appointed a boatswain in the regular Navy, May 7, 1867. Prior to that time he served as master's mate, and acting gunner (from July 30, 1862, to April 16, 1866). He asks, under the Act of August 5, 1882, that he be credited with his former services in determining his rate of pay in his present position. His right to be so credited seems to depend upon the question whether he could have been so credited if his whole service had been continuous and in the regular Navy. The provisions of the Act of August 5,1882, being, "and all officers of the Navy shall be credited with the actual time they may have served as officers or enlisted men in the regular or volunteer Army or Navy, or both, and shall receive all the benefits of such actual service in all respects in the same manner as if all said service had been continuous and in the regular Navy: *Provided*, That nothing in this clause shall be so construed as to authorize any change in the dates of commission, or in the relative rank of such officers." The pay of a boatswain at and prior to the act last mentioned was by Section 1,556, Revised Statutes, fixed at certain rates "during the first three years after date of appointment," and at certain other designated rates during the second, third, and fourth "three years after such date." Under these provisions any services performed by the claimant in any other capacity than that of boatswain could not have been counted in determining his rate of pay, had they been continuous and in the regular Navy, and as the recent act provides that officers shall receive the credit and the benefit of services "in all respects in the same manner as if all said services had been continuous and in the regular Navy," I do not think I am authorized to credit an officer with time which could not have been counted, if all his services had been continuous and in the regular Navy. To do so would be to disregard the pro-

visions of law fixing the pay of officers, so far as those provisions make the rate of pay depend on the length of services in the particular grade. The rejection of this claim by you is approved.

W. W. Upton,
Comptroller.

EXHIBIT "B."

Treasury Department.
Second Comptroller's Office,
Washington, D. C., July 31, 1883.

Respectfully returned to the Hon. Fourth Auditor.

It appears from the papers submitted that Samuel Cross was appointed a gunner in the regular Navy July 8, 1872, and that he is still serving under that appointment. Prior to that time he served as an acting gunner in the volunteer Navy for a period of 246 days. He asks, under the acts of August 5, 1882, and March 3, 1883, that he be credited with his former services in determining his rate of pay in his present position. His right to be so credited under the Act of 1882, depends upon the question whether he could have been so credited if his whole service had been continuous and in the regular Navy, the provisions of the Act of August 5, 1882, being, "and all officers of the Navy shall be credited with the actual time they may have served as such officers or enlisted men in the regular or volunteer Army or Navy, or both, and shall receive all the benefits of such actual service in all respects in the same manner as if all said service had been continuous and in the regular Navy." By section 1556 of the Revised Statutes, a gunner is entitled to be paid at a certain rate during the first three years of his service, and at certain higher rates for his services thereafter. I think it follows from the provisions of the Act of August 5, 1882, that the claimant is entitled to be paid at the same rate as if his services as gunner had been continuous in the regular Navy.

This case does not differ in principal from the claim of Thomas McGlone, passed January 22, 1883, and the claimant is entitled to count the time in which he served as gunner in the Navy, and to be paid as upon

his second three years' service as gunner from December 22, 1874, and at the higher rate provided for each three years thereafter, and I respectfully request that his account be adjusted accordingly.

W. W. UPTON.
Comptroller.

EXHIBIT "C."

Claims certified by the Fourth Auditor and confirmed by the Second Comptroller, under the Act of August 5, 1882, and paid from existing appropriations—Pay of Navy.

Russell, John, gunner, certified Nov. 15, '82: For services from Aug. 14, '75, to Sept. 30, '82,	$1,866.79
Grace, H. P., boatswain, certified Dec. 26, '82: For services from Dec. 23, '74, to Aug. 14, '81,	1,086.82
Harman, Andrew, gunner, certified Jan. 8, '83: For services from July 1, '74, to Feb. 8, '82,	1,122.69
Farrier, W. A., gunner, certified Jan. 27, '83: For services from July 1, '74, to Dec. 22, '82,	1,313.65
Chavalier, Jno. C., sailmaker, certified Feb. 2, '83: For services from July 1, '74, to Nov. 4, '81,	955.30
McGlone, Thos., carpenter, certified Jan. 22, '83: For services from June 11, '75, to May 17, '82,	560.52
Total paid from existing appropriations,	$6,905.77

EXHIBIT "D."

Claims certified by the Fourth Auditor and confirmed by the Second Comptroller, under act of August 5, 1882, reported to Congress for appropriation, and paid in pursuance of appropriation therefor.

Grace, H. P., boatswain, certified Dec. 26, '82: For services from Nov. 3, '62, to March 6, '74,	$ 339.89

Frankland, H. W., sailmaker, certified Dec. 26, '82: For services from March 2, '81, to Feb. 26, 73,	3,502.30
Harman, Andrew, gunner, certified Jan. 6, '83: For services from Feb. 10, '70, to March 3, '74.	572.03
Ayers, J. G., surgeon, certified Feb. 8, '82: For services from Jan. 1, '68, to October 11, '74,	965.69
Bayley, W. B., passed ass't engineer, certified Jan. 8, '82: For services from Jan. 27, '67, to Sept. 1, '75,	1,008.46
McElmell, E. F. ass't engineer, cert'd Dec. 19, '82: For services from Dec. 8, '65, to July 22, '73,	809.91
Total reported to Congress, appropriation made, and claimants paid,	$7,198.28